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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10 000.330	12 04 2001	Heinz Berbner	48606-DIV	1457

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Herbert B. Keil
KEIL & WEINKAUF
1101 Connecticut Avenue, N.W.
Washington, DC 20036

EXAMINER

CHIN, PETER

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 03.17.2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/000,330

Applicant(s)

BERBNER ET AL.

Examiner

Peter Chin

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 12-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/555,598.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. Claims 12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zettler et al (DE 3147308) and Nihongi et al (DE 2364091) in view of Weiser et al (EP 523485).

Zettler et al discloses a non-woven melamine formaldehyde resin fiber insulation mat useful as a building material. The mat is 50-100 mm thick, has a density of 15-50g/l; and in a specific example, a mat shows a spontaneous recovery of 85% and after 6 hours, 100%. Zettler et al, on page 2 employs fire resistant melamine formaldehyde resin fiber such as those disclosed by Nihongi et al, who contemplates the use of substituted melamine in the melamine formaldehyde resin. Thus it would be obvious to use other known fire resistant substituted melamine formaldehyde resin fiber such as the one disclosed by Weiser et al, which are the same melamine formaldehyde resin fibers as claimed. Since the Zettler et al mat is a building material, it is inherently installed in a building structure.

2. Claim 13-17, 19-21, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zettler et al and Nihongi et al in view of Weiser et al as applied to claim 12 above, and further in view of Berbner et al (WO 9701661).

Berbner teaches that it is well known to employ thermoplastic fibers such as polyester fiber as bonding fiber for melamine formaldehyde resin fiber non-woven. Thus it would have been obvious to use the claimed polyester fiber as the binder in Zettler et al. The use of sheath and core polyester fiber as in claims 17, 19, 21 and 24 would have been obvious since it is a standard type for use as bonding fiber in making non-

wovens. If evidenced is needed see Fottinger et al (5,387,382) and Matsuda et al (5,677,027).

3. Claims 12-26 rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The thickness, density, sound adsorption and recovery capacity as stated on page 13 are properties critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

4. It is noted that if the limitation of claim 18 is combined with independent claims 12 and 26 and the 35 USC 112 deficiency is resolved, the claims would be allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Chin whose telephone number is (703) 308-2046. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7718 for regular communications and (703) 305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.



Peter Chin
Primary Examiner
Art Unit 1731